

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re A.B., a Person Coming Under the
Juvenile Court Law.

H046437
(Santa Cruz County
Super. Ct. No. 18JU00208)

SANTA CRUZ COUNTY HUMAN
SERVICES DEPARTMENT,

Plaintiff and Respondent,

v.

G.B.,

Defendant and Appellant.

I. INTRODUCTION

G.B., father of the child at issue here, appeals from the dispositional order removing the child from his physical custody under Welfare and Institutions Code section 361, subdivision (c).¹ The child, who was adjudged a dependent of the juvenile court under section 300, subdivisions (b) and (c), had been residing with father at the time the section 300 petition was filed. On appeal, father contends that there is not substantial evidence that removal was the only reasonable way to protect the child. For reasons that we will explain, we will affirm the court's dispositional order.

¹ All further statutory references are to the Welfare and Institutions Code.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Section 300 Petitions

In August 2018, the child, who was then 11 years old, reported that father punched her leg with a closed fist, scratched her arm, and hit her head. The child had a bruise on her leg and a scar on her arm. She also reported that father had physically abused her on prior occasions and made negative comments to her, including threatening her, yelling profanity at her approximately five times per week, and blaming her for difficulty in his interpersonal relationships. The child was sad and withdrawn, had pulled out her hair due to stress, and had stated a fear that father would kill her.

On August 31, 2018, the Santa Cruz County Human Services Department (the Department) filed a petition as to the child under section 300. Mother's whereabouts were unknown to the Department at the time. On September 4, 2018, the juvenile court ordered the child detained and ordered supervised visitation a minimum of one time per week for father.

The Department located mother, who was living out of state. The Department filed first and second amended petitions under section 300, subdivisions (a) [serious physical harm], (b)(1) [failure to protect], and (c) [serious emotional damage]. In addition to the allegations concerning father's treatment of the child, the Department alleged that mother abused substances including alcohol and cocaine, that she was aware of father's harmful conduct to the child, and that her substance abuse negatively impacted her ability to provide appropriate care for the child.

B. Jurisdiction/Disposition Report

The social worker's report and written updates for the jurisdiction/disposition hearing recommended that the petition be sustained, that the child remain in out-of-home placement, and that both parents receive family reunification services. The reports and updates included the following information.

1. Family history and prior referrals in Alaska

Mother and father had been in a relationship in Alaska but never married. In 2012, an Alaska court awarded father sole legal custody and primary physical custody of the child, and mother was granted visitation.

Between 2007 and 2016, there were 11 prior referrals in Alaska for child abuse and/or neglect although only one referral, against mother, was substantiated.

One of the prior referrals involved a September 2016 incident in which the Anchorage Police Department responded to a report of child abuse at a hotel. Hotel security provided police with a video of the incident showing father upset with the child, who was nine years old, because she had not brushed her hair. Father told the child that if she did not take care of her hair, he would have her head shaved. He also told her that he would beat her if she did not come over to him. In the video, father appeared to hit the child on her face or head. A police officer contacted father and the child. According to the police report, father denied slapping or smacking the child but said he “swatted at her face” when she was talking back. He reported that he didn’t leave a mark and that he does not spank her. The officer did not observe any injuries on the child’s face. The child stated that she felt safe at home, and that she was only talked to, not spanked, when she was in trouble. The matter was referred to Alaska child protective services, where the report of physical abuse was found not substantiated.

2. The child’s disclosures in California

In 2018, while in school in California, the child appeared “ ‘shut down’ and ‘sad.’ ” On August 29, 2018, the child disclosed at school that father had been physically abusive to her for the past three years. The most recent incident occurred that morning when he yanked her hair and hit her head hard. She also had a bruise on her leg from being hit the week prior. The child indicated that father blamed her for his former wife and the child’s half sibling leaving him. The child cried and stated that she was “ ‘innocent’ ” of father’s accusations.

The child was interviewed by a Santa Cruz County sheriff's deputy and a social worker that same day. The child made the following additional disclosures. Father had been hitting her for three years after her half sibling was born. He usually hit her on the leg about two times a week. That morning, they had argued about a sweater, and he yanked her hair hard and hit her hard in the head. Father hit her on the head frequently because it doesn't leave a mark. Regarding the bruise from the week prior, he had hit her hard once or twice with a closed fist. A few weeks prior, he intentionally scratched her, leaving a scar. Father also yelled profanity at her about five times per week. He used profanity a lot regarding her mother. The child had not seen mother in years, and father's negative talk about mother hurt the child's feelings.

The child was advised by the social worker that he was going to talk to father. When asked about returning home, the child's stress level increased, as evidenced by a change in her facial expression and nervous fidgeting. The child asked if she had to go home and stated that father was "going to mess" with her and "kill" her. The child indicated that she did not feel safe at home with father, and that there was no other adult who she could contact to help her feel safe at home.

The social worker and a sheriff's deputy spoke with father on the phone. Father stated that the child had been fighting with him and was "oppositional." He stated that the child was screaming that morning for no reason and hitting him with a shoe. Father denied ever hitting the child. When asked about the bruise on the child's leg, he indicated that it may have come from riding a bike or climbing on rocks.

Father stated that the child's mother was abusive and into drugs. He indicated that the child " 'did this before' " because she was jealous of his intimate partners. Father stated that the child had been acting up because his current girlfriend had been spending more time with them. He reported that his ex-wife (the mother of the child's younger half sibling) left him because of the child, and that his ex-wife wanted to keep the child away from the half sibling. Father repeatedly declined to meet with the social worker.

After father was informed that the child could not return home if father did not meet in person, father agreed to meet at the police station.

Father's girlfriend came to pick up the child and transport her to the police station. The girlfriend had known father for six months. She reported that father and child fought like " 'cats and dogs.' " The girlfriend had observed father raise his voice in frustration, but she had never seen him use physical discipline. She saw the child hit father when the child became upset.

At the police station, father reported the following to the social worker. Father and child had argued that morning about the child changing schools. The child made up the accusations against him because she did not want to go to a different school. The child was screaming during the argument, and father maintained his distance from her. Father blamed the child for the breakup of his relationship with his ex-wife. He attributed the ex-wife's restraining order to the child's behaviors. When the social worker discussed relative or non-relative placement options, father stated, "She did this to herself," and indicated that the child would have to deal with going into foster care.

The child was placed into protective custody by the sheriff's department that day on August 29, 2018. When the social worker informed the child that she would not have to go home with father, she let out an audible and visible sigh of relief.

On August 30, 2018, after being placed in a foster home, the child reported that she " 'like[d] it' " there, and that she didn't " 'have to worry about getting hit when [her father] wants to.' "

On August 31, 2018, the child told the social worker that she had spoken to a half sibling in Alaska, and that she had to " 'correct her father's lies' " to the half sibling. She explained that father often left things out of a story or added things that did not really happen. This made the child " 'really mad.' " She usually "holds it in," but she had in the past pulled her hair out. When she did this, father would tell people that she was " 'crazy.' "

The social worker spoke to the father on the phone on August 30, 2018, and in person on August 31, 2018. Father indicated that the child had made the accusations against him because she did not want to leave her school where she had a boyfriend. According to father, the child had packed her “ ‘stuff’ ” and this was “ ‘pre-planned.’ ” Father denied disparaging the child’s mother at any point. Regarding the break up with his ex-wife, father stated that he did not blame the child, and that the child herself said, “ ‘I made [the ex-wife] leave.’ ” Regarding the current circumstances involving the child, father attributed it to the child “act[ing] up” and lying. During the in-person meeting, father was texting and talking to someone on the phone. Father eventually left the building and apparently declined to meet further with the social worker.

3. Father’s supervised visits and phone contact with the child

The social worker gave father the phone number for the foster home where the child was located. Father was told to keep his conversations with the child neutral and to not discuss the case. The foster mother reported that father at times would text before calling the child, and that the child would decline to talk with father on the phone. During at least the first few weeks, the child did not initiate any calls with father.

Eventually the Department had to restrict and monitor father’s phone calls because he was not respecting the child’s verbal boundaries. For example, the child told father not to talk negatively about mother, but he continued to bring up past allegations against mother. Prior to the dependency proceedings, father had indicated to the child that mother was likely dead by making statements such as, “ ‘Your mother is probably dead in a ditch somewhere,’ ” “ ‘I hope your mother is dead,’ ” and “ ‘You’ll never see your mother again, because she’s probably dead.’ ” The child also reported that father called mother “the ‘C’ word.” The foster mother reported that the child cried when she found out mother was alive. After the child told father that she had been talking with mother on the phone, “ ‘he freaked out,’ ” and the child hung up on him. The child was upset as a result. Father then sent five text messages to the foster mother and was not respecting the

foster mother's communication boundaries. According to the foster mother, the child appeared "tired" of father's lies and manipulation and often did not want to have contact with father when he called or texted.

During supervised visits, father often spoke negatively about the child's mother, the Department, and the case. For example, during a supervised visit on September 12, 2018, the child told father that she had talked to mother by phone the previous night. The child was upset with father because, according to mother, she had been trying to get in contact with the child over the years. Father indicated that he hadn't heard from mother since he obtained custody of the child. Father expressed concern about mother having contact with the child. The visit supervisor told father to talk to the social worker about his concerns and to refrain from making certain comments during the visit. Father continued to express concern that mother should not have contact with the child.

Prior to a supervised visit on September 19, 2018, the child reported feeling anxious and stressed because father was sending long text messages to the foster parent about the child having communication with mother. The child was worried because father continued to say that he was talking to a lawyer and suing everyone. The child stated that she did not want father talking about mother and asking too many questions. The visit supervisor indicated that she would step in and redirect father if the child signaled that she was uncomfortable. During the supervised visit, father indicated that he did not want the child having communication with mother. The child signaled, and the visit supervisor asked father to refrain from discussing the subject.

During the September 27, 2018 supervised visit, the child told father that mother was coming to visit in October. Father indicated that he was upset about mother visiting the child, that the mother's visit must be supervised, that he was upset with the system for allowing contact between mother and the child, and that the social worker had not conducted a thorough investigation. Throughout these statements by father, the visit

supervisor tried to redirect the conversation, asked father to change the subject, encouraged father to contact the social worker with his concerns, and asked father to stop talking about the case.

During the October 3, 2018 supervised visit, father stated that when everything was resolved, he and the child would move to a different state. He further stated that “ ‘we’re dealing with a lot of ridiculous people’ ” right now, and that he was suing the Department. The visit supervisor asked father to change the subject and focus on age-appropriate conversations with his daughter. Father later resumed talking negatively about the Department and the social workers and suing everyone. The visit supervisor again asked father to change the subject.

During the October 10, 2018 supervised visit, father and the child talked about family members who were visiting from Alaska. Father told the child that they should not have moved from Alaska to California, that California was a liberal state, and that the system in California takes children away from their parents.

During the October 17, 2018 supervised visit, father complained about the social worker and about phone conversations with the child being restricted to a certain time. Father also stated that mother’s contact with the child needed to be supervised, that he was going to get a restraining order against mother, that he was going to the police, that mother was a drug addict and had a felony, and that he was upset with the social worker and with the system for allowing contact between mother and the child. The visit supervisor repeatedly told father to contact the social worker with his concerns and to stop talking about mother or the case. When the child stepped out to use the bathroom, the visit supervisor told father to enjoy his time with the child and that the child seemed to be getting upset regarding father talking about mother. When the child later indicated to father that his ex-wife and the half sibling were coming for the child’s birthday, father said, “ ‘Oh I see what they’re doing. They’re getting all these people to talk about me,’ ” “ ‘It’s war,’ ” and “ ‘As soon as everything is over, I’m going to sue them.’ ” Father later

asked whether maternal grandmother had removed a restraining order against mother. The child indicated that mother and grandmother were on good terms.

During the October 24, 2018 supervised visit, the visit supervisor again had to ask father several times to stop discussing the case. The visit supervisor explained that the main purpose of the visit was to engage with the child in a positive manner. Father continued nonetheless, stating four times, “ ‘CPS is evil. They illegally kidnapped you.’ ” He also stated, “ ‘I’m suing that [social worker]! He doesn’t know what’s coming to him!’ ” Even after another supervisor came into the room and spent nearly half an hour trying to redirect father, father continued to talk about the case and his intent to sue the social worker and the Department.

The Department was concerned that during unmonitored phone calls, father was instructing the child to act out and recant her past statements about abuse. For example, after a short period of unmonitored calls with father, the child told a social worker that she planned to tell the court that she never stated father hit her, and that this would enable her to return to father’s care immediately.

In early November 2018, father and the child exchanged text messages through the foster mother’s phone. The child stated in one message, “I have got a few tricks up my sleeve for court.” Father told her to be honest and speak from her heart. The child stated, “Can’t wait to See you’re in [the social worker’s] face [*sic*].” Father stated, “[L]et’s not talk about that”

Later, the child texted to father, “Just wait until we get to court and the judge reads my notebook, you are going to be laughing so hard by the look on [the social worker’s] face that you’ll be picking your pants [*sic*],” and “Lol.” At some point thereafter father stated, “Ok honey I just wanted to clarify that because they read all this. I know you can totally take that [social worker] and slam him just with the truth and I’m looking forward to the truth coming out because I’m sure he’s been pretty dirty with what he’s been trying to do and the tracks [*sic*]. He has been disrespecting a lot of people and that’s not OK at

[sic] worst part about it he took you away from home [¶] I am looking forward to you exposing him! You rock. . . .” The child stated, “LOL can’t wait it’s gonna be so funny to see both of your faces.”

In a further exchange, the child texted, “They are such a holes.” Father responded, “Please do not speak like that sweetheart you’re too wonderful and pure OK [¶] Trust me you and I are both on the same page and we both are very unhappy with him but we have to remain a higher level than those little people.” The child stated, “Tell yourself that [¶] You do it all the time.” Father continued, “We are going to be successful, Rich and happy. And they never will be because they are miserable and negative and do this to people and that is very evil and the Lord does not bless people that do harm to others.”

4. Interviews with mother and other family members

Mother reported that she was 17 years old when she began a relationship with father, who was 29 years old. Father physically abused her. He told her that he knew martial arts and could hurt her without leaving a mark. Mother was in a “constant battle” with father to maintain a relationship with the child. At some point, father would not take mother’s telephone calls during scheduled contact with the child. Mother’s last contact with the child was by phone a few years ago. Father told mother that the child did not want to speak to her.

Mother had drug and alcohol problems. She indicated that she last used cocaine in 2017, and that she stopped drinking regularly in 2017. Mother characterized her drug and alcohol problems as a response to trying to cope with the father’s abuse and the loss of contact with the child. Mother admitted making mistakes when she was younger. She believed she had “changed a lot” and was “trying to make a stable place for [her] and [the child].” Mother indicated that she was not yet stable enough to care for the child and wanted the child placed with a maternal aunt. Mother agreed to participate in a drug and alcohol assessment, attend counseling services, and work with the child’s health and school providers to reintegrate into the child’s life.

The child's maternal grandparents described father as " 'very controlling' " and stated that father would use the child "as a tool against everyone." He would not take phone calls from mother who sought to talk to the child.

The child has three paternal half siblings—two older and one younger. The mother of the two older half siblings had sole legal custody and primary physical custody according to Alaska court records. She reported that her two children "would act out" when they visited father. The children told their mother that during one visit, father punched a hole in the microwave. In referring to the incident, the children stated to their mother, " 'That's just dad.' "

Father's ex-wife, who was the mother of the child's younger half sibling, dissolved her marriage to father in 2017. She was granted sole legal and physical custody of the half sibling by San Luis Obispo County Superior Court. The ex-wife reported that she had known the child and father since the child was three years old. Father would not answer the phone when mother tried to contact the child pursuant to court-ordered phone contact. He also regularly talked disparagingly about mother in front of the child. The ex-wife had never seen mother mistreat the child or abuse substances while the child was in mother's care. Father was verbally abusive to the ex-wife and to the child. Father told his ex-wife that, "because of his military and Akido training, he could get rid of a body and nobody would ever find it." Father yelled at the child a lot, told her that she was " 'terrible,' " and called her a " 'bitch.' " He slapped the child across the face and was regularly "swinging his hand at her." Father had gotten into physical fights with other adults and had punched holes in the wall. The ex-wife had been the main point of contact for the child's schools because father would become mad and had frequent conflict with school staff. The ex-wife left father because of his behavior, not because of the child. In December 2017, the ex-wife obtained a three-year domestic violence restraining order against father. Father was allowed professionally supervised visits with the half sibling.

The paternal aunt, who was father's twin, reported that she had not spoken to father in five or six years after they had a " 'bad falling out.' "

The paternal uncle similarly reported that he had not had contact with father in about a year, and that there had been prior "cut-offs" with father after disagreements. The paternal uncle reported that father referred to the child as his " 'special needs daughter' " in front of her.

The paternal grandmother likewise reported that she had not spoken with father in a couple of years because " 'things kind of blew up.' " The paternal grandmother reported that father was strict with the child and raised his voice, but she had never witnessed any physical discipline.

5. Other investigation and assessment by the Department

Father requested that the paternal aunt, the paternal uncle, a neighbor, and the paternal grandfather be assessed for placement of the child. The paternal aunt and the paternal uncle declined placement, the neighbor agreed to placement for a very limited amount of time, and the grandfather did not return the social workers' phone call.

Father reported that the child had autism and fetal alcohol syndrome. The Department collected the child's medical and school records in order to refer the child for a comprehensive developmental assessment to ensure that she had the proper diagnoses and services. The child's individualized education program from October 2017, as updated and amended in 2018, reflected that she needed special help with math.

The Department reported that it had attempted to engage father in safety planning around the child's physical and emotional well-being. Father's responses included blaming the social worker for harassment of father and unprofessional behavior. Father also blamed the child for being placed into foster care, stating, " 'She did this to herself' " After the Department located mother and put her in contact with the child for the first time in years, father texted intimidating messages to the family where the child had been placed regarding legal action if the family allowed the child to talk with

mother on the phone. The Department instructed father not to discuss the case with the family where the child had been placed and not to disparage mother to the child, but he continued to do so.

The Department believed it was in the child's best interest to remain in out-of-home care while the parents received family reunification services, due to father's physical and emotional abuse of the child and possible untreated mental health problems, and mother's present inability to care for the child due to untreated alcohol and substance abuse. The Department recommended a neuro-psychiatric evaluation for father to determine which services were the most appropriate. The Department also believed that, until father could engage in "child-directed" visits, an increase in visitation would be "destabilizing" for the child. The Department referred to father's supervised visits in which he often spoke negatively about mother, the Department, and the case.

C. Jurisdiction/Disposition Hearing

On October 22, 2018, the juvenile court granted father's request for a continuance of the jurisdiction/disposition hearing. The court proceeded with a hearing as to mother and found the allegations as to mother in the second amended petition true.

The continued hearing was held on October 29 and November 7, 2018. The child, who had turned 12 years old, testified that the August 2018 incident involved an argument with father about a sweater and changing schools. She testified that father gave her "a little slap on the head, but it didn't hurt." The child further testified that, "[e]very once in a while when he gets really, really mad," he "gives [her] a little slap on the head, but not hard." She stated that father "can't really control his anger if he gets really, really mad." They did not argue very often according to the child.

The child testified that the social worker "probably heard [her] wrong" and maybe made up certain statements that were attributed to the child. The child testified that she did not remember telling the social worker that father hit her hard, yanked her hair hard, and hit her head because it doesn't leave any marks. The child similarly testified that she

did not remember telling the social worker that father would kill her if she went home. When asked how she got a bruise on her leg that she had disclosed at school, the child testified that her mother's side of the family is Norwegian. The child "heard" that a Norwegian's "skin is very sensitive," and "sometimes bruises can just appear out of nowhere." She explained that she heard about Norwegian skin from father, and that she knew "from experience that bruises appear out of nowhere." The child testified that her bruise might have come from bumping against something.

The child testified that father told her that mother "might possibly be dead." She first heard that mother was alive from the social worker. When asked whether she was angry about finding out mother was alive, the child stated, "I was in between." She acknowledged that father made statements about mother that were hurtful, but the child indicated that he only made the statements when he was really mad during some arguments.

Admitted into evidence was a document containing the outline of a house and the pre-printed phrase, "House of Worries." The child had written inside the house, "I am worried I will have to go back to dad." At the hearing, the child testified that the statement was not accurate, and that sometimes she writes things that she doesn't mean when she is really upset. She also denied making, or did not remember making, other statements reflected in the document.

The child testified that she talked to the police in Alaska two years prior regarding an incident at a hotel. Her father had been upset because she had not brushed her hair that morning. She did not remember her father hitting her during the incident.

The child liked the current supervised visits with father because he was not fighting with or yelling at her. She would like to live with father if he wasn't yelling, hitting, or mad at her, and it would be "good" if he didn't say "bad things" about mother, such as her being dead.

The child testified that father had given her a notebook after the last court appearance. She had written in the notebook within the week prior to testifying. The child stated the following in the notebook. The social worker was “sneaky” and a “jerk.” The social worker and CPS were causing “trouble,” not father. The child was “smarter then [sic] most of CPS put together.” The social worker thought he had the child “tangled up in his web of lies,” but he was “sooo busted.” The child “ha[d] played [him] the whole time making [him] think [she was] a glibble [sic] kid” “[F]ather will sue [the social worker] and once [they] finish [the social worker], [the social worker] will wish [he] never tried to use [the child].” The social worker “owe[d]” father and the child an apology. The child would make sure the social worker “never mess[es] with another kids [sic] head again,” and “that’s not a threat, It’s a Promise.” The child did not like the social worker because he had “legaly kidnaped [sic] lots of kids. He just wants money.”

The child testified that she was not afraid of her father, and that she wanted to go home that day.

A senior social worker who had interviewed the child testified that the “House of Worries” document was an interview strategy used to assess safety risks to minors. She had asked the child what she worried about in her house and then wrote her responses on the document. The child’s statements included, “[I’]m worried my dad will hit me again,” and “I am also worried I will have to go back to dad.” On a second page with a house entitled “House of Good Things,” the child stated, “Not living with dad and being abused anymore,” and “At visits I have fun with my dad[.] We do not fight, and he doesn’t yell at me.” On a third page entitled, “House of Dreams,” the child stated, “My dad would be in anger management,” and “I would live with my dad if” he “didn’t hit me,” “yell at me,” “say awful things about my mom,” and “[b]lame me for things I didn’t do.”

A friend of father, who lived a quarter mile away from father and the child, testified at the hearing. The friend’s daughter was the same age and attended the same

school as the child. The two families socialized together usually two or three times a week. The friend testified that she never saw father hit the child. Regarding the August 2018 incident in which father and the child had an argument about changing schools, the friend testified that father called her (the friend) because he was concerned that the child wasn't calming down. Father hoped the friend could talk to the child or be a witness because the child "was in one of her fits." While on speakerphone, the friend heard the child screaming and father telling her to calm down. Among other statements, the friend heard the child say, "Leave me alone. Don't hit me." Father responded, "I am in the kitchen and you are standing on the front porch."

The friend testified that she had seen the child acting out on other occasions, and that father did not do anything other than raise his voice. When the child was in "emotional distress," the friend had seen the child "shut[] down," stop talking, and act like nobody is in the room, or on other occasions, she had seen the child yell, talk back, and be aggressive, meaning throw her backpack on the floor, stomp off, and shut the door in the friend's face. The friend testified that she had asked the child on one occasion whether father had ever been physical with her, and the child responded that father had only yelled at her. Father indicated to the friend that he thought mother was in Florida. He never indicated to the friend that mother might be dead.

Father testified that the child had been living with him full time since she was approximately four and a half years old. He had custody pursuant to an Alaska family court order, and mother was to have supervised visits. Father stated that mother did not visit the child, and that the child last saw mother in about 2010. He testified that he was "supportive" of the child having supervised visitation with mother, and that he never told the child that mother was dead.

Father initially testified that he did not physically discipline the child. He later testified that he does not touch the child and that if he does, "it's hardly anything at all."

Father testified that he never physically abused the child. He did not hit her head, scratch her arm, punch her leg, or cause a bruise on her leg. He stated that he “might have tapped her on the head” when he “tripped over her backpack,” but he “did not hit her.” Father noticed that the child had a bruise on her leg, but he attributed it to bike riding.

Father testified that he did not make a physical threat to his child, and he did not call her a “bitch” to his recollection. He also did not yell profanity at her approximately five times per week as alleged. Father had “accidentally cussed a few times like normal people” and “regretted it.” He did not blame the child for CPS involvement. Regarding the allegation that he blamed the child for difficulties in his interpersonal relationships, he testified that he was engaged to be married, and that he did not have difficulties in his interpersonal relationships at this time. Father testified that the child was not sad and withdrawn while in his care.

The father believed the child had “special needs,” was a “[h]igh-functioning autistic,” and that she suffered from fetal alcohol syndrome.

Regarding the incident at the Alaska hotel approximately two years prior, the Department obtained a copy of the video referenced in the Anchorage police report and the video was admitted into evidence. Father testified that he had been talking to the child about her hair not being “done.” He denied taking a “swing” at her. When subsequently asked whether the child said “ow” in the video, father again denied that he had swung at her. He testified that “ow” was “a normal thing for [her] to say every time she gets her hair brushed.” Father also testified that the child “fell on the floor trying to do her thing that autistic folks do and that’s all that happened.” When asked whether the child was crying in the video, father testified, “I don’t know. I can hardly hear it. I hear her carrying on like she normally does.” When asked whether he remembered his earlier testimony that he did not recall ever calling his daughter a “bitch,” father testified, “I don’t remember it, but I saw the video and when I said it and what I said.”

Regarding the August 2018 incident, father testified that he had a “discussion” with the child about changing schools, to which she objected.

Father had been given a referral for counseling. He indicated that he met with the counselor a week prior to testifying although he did not remember the name of the counselor.

Father requested that the juvenile court not sustain the petition, and he indicated that he disagreed with the removal of the child from his care.

D. Juvenile Court Findings and Orders

At the end of the November 7, 2018 hearing, the juvenile court found true the allegations in the second amended petition under section 300, subdivision (b)(1), regarding the child having suffered, or there being a substantial risk that the child will suffer, serious physical harm, and subdivision (c), regarding the child suffering, or being at substantial risk of suffering, serious emotional damage. The court did not find true the allegations under section 300, subdivision (a), regarding serious physical harm inflicted nonaccidentally. The court adjudged the child a dependent of the court.

In making these findings, the juvenile court found credible the child’s statements to social workers and found not credible the child’s retraction of those statements at the hearing. The court explained that it found the senior social worker’s testimony credible regarding her writing down exactly what the child had stated, including that the child was worried that father would hit her again. The court also stated that the video showing father’s treatment of the child on a prior occasion was similar to the child’s description to the social worker of father’s treatment of her during the more recent August 2018 incident.

The juvenile court expressed concerned about father’s statements regarding mother. The court referred to father’s statements during an October 17, 2018 supervised visit when he was told that his statements were not appropriate, yet he continued to talk about getting a restraining order against mother, calling the police, and mother being a

drug addict and having a felony. The court also referred to evidence that father told the child that mother was dead and used offensive language about her. The court further observed that father's statements during supervised visits were "reflected" in the child's notebook, and the court found it "very concerning."

The juvenile court believed the August 2018 incident was not a "one-time incident," and that there was a pattern of behavior by father that was corroborated by statements from others. The court found the child's statement in the "house of dreams" exhibit that she wished "father would be in anger management" was "very telling about what's really going on in this case.'

The juvenile court also referred to evidence that the child was "shut down and sad" in school, and that the child had cried when indicating she was "innocent" of father's accusations that she had made the ex-wife and half sibling leave. The court expressed concern about the text messages and found that the messages "really show the kind of manipulation that has been going on."

The juvenile court found that reasonable efforts had been made to prevent or eliminate the need for removal of the child from father's home. The Department's reasonable efforts included interviewing the child, assessing her safety in the family home, meeting with father, assessing his ability to be protective, and determining whether safety planning with father was possible. The Department also assessed a neighbor as part of a safety plan for the child, contacted extended family members to gather information, searched for mother, and obtained documents from Alaska. Since the time the child was detained, the Department provided visitation and counseling. The Department ultimately determined that safety planning would not be possible in this case. The court indicated that safety planning was not possible because of father's "denials concerning his treatment of [the child] and his inability to communicate in a manner that reflected that he would be willing to follow through with those safety plans."

The juvenile court ordered the child removed from father's physical custody after finding by clear and convincing evidence that: (1) there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if she is returned home, (2) the child is suffering severe emotional damage, and (3) there are no reasonable means by which her physical and emotional health could be protected without removing her. In making these findings, the court referred to the fact that father continued to discuss mother in derogatory terms in front of the child, and that he was unable to control himself during visitation from talking about his personal dislike of social workers or the system. The court found that the child was suffering severe emotional damage as reflected in her behavior, including withdrawal, that had been observed by the school. The court also referred to the statements in the child's notebook, which reflected the "inappropriate conduct of father during visitation and how his obsession with respect to what's going on has prevented him from having a normal parent-child relationship and from supporting the minor's emotional health."

The juvenile court also found by clear and convincing evidence that placement with mother, the noncustodial parent, would be detrimental to the child. The court found that both parents had made "minimal progress towards alleviating or mitigating the causes that have necessitated the initial placement of [the child] in out-of-home care, and there has been little or no compliance with the case plan to date."

The juvenile court ordered reunification services and visitation for both parents. Father's case plan included participating in an anger management assessment and any recommended treatment, participating in therapy, and participating in a psychological evaluation and following all recommendations.

III. DISCUSSION

Father contends the juvenile court erred in ordering removal of the child from his custody because there is not substantial evidence showing that removal was the only reasonable way to protect the child.

The Department contends that there is substantial evidence to support the juvenile court's finding that there were no reasonable means available to keep the child safely in father's care. The Department also argues that father "actively blocked" it from creating a safety plan for the child's return to his care, and therefore he should be precluded from arguing that the Department did not make reasonable efforts to return her to his care, or that the court did not consider reasonable alternatives to removal.

A. Legal Principles Regarding Removal

"After the juvenile court finds a child to be within its jurisdiction, the court must conduct a dispositional hearing. [Citation.] At the dispositional hearing, the court must decide where the child will live while under the court's supervision. [Citation.]" (*In re Hailey T.* (2012) 212 Cal.App.4th 139, 145 (*Hailey T.*))

The juvenile court may not remove a dependent child from the physical custody of his or her parents with whom the child resided at the time the petition was initiated "unless the juvenile court finds clear and convincing evidence" at least one statutorily specified circumstance. (§ 361, subd. (c).) Two circumstances are relevant here.

First, "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and *there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody.*" (§ 361, subd. (c)(1), italics added.) "The court shall consider, as a reasonable means to protect the minor, each of the following: [¶] (A) The option of removing an offending parent . . . from the home. [¶] (B) Allowing a nonoffending parent . . . to retain physical custody as long as that parent . . . presents a plan acceptable to the court demonstrating

that he or she will be able to protect the child from future harm.” (§ 361, subd. (c)(1)(A) & (B).)

Second, alternatively, “[t]he minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and *there are no reasonable means by which the minor’s emotional health may be protected without removing the minor from the physical custody of his or her parent . . .*” (§ 361, subd. (c)(3), italics added.)

If the Department recommends removal of the child from the home, the Department’s social study must include a discussion of the reasonable efforts made to prevent or eliminate removal. (See Cal. Rules of Court, rule 5.690(a)(1)(B)(i).) The juvenile court must “make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home” and “shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) “[R]easonable efforts . . . need only be reasonable under the circumstances, not perfect [citation].” (*In re H.E.* (2008) 169 Cal.App.4th 710, 725.)

“ ‘A removal order is proper if it is based on proof of parental inability to provide proper care for the minor and proof of a potential detriment to the minor if he or she remains with the parent. [Citation.] . . . The focus of the statute is on averting harm to the child. [Citation.]’ [Citation.]” (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969 (*Miguel C.*)). Removal, however, “is a last resort.” (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525; accord, *Hailey T.*, *supra*, 212 Cal.App.4th at p. 146.)

B. The Standard of Review

“We review an order removing a child from parental custody for substantial evidence in a light most favorable to the juvenile court findings. [Citations.]” (*Miguel C.*, *supra*, 198 Cal.App.4th at p. 969.) “[W]e do not pass on the credibility of witnesses, resolve conflicts in the evidence or weigh the evidence. Instead, we review the record in

the light most favorable to the juvenile court's order to decide whether substantial evidence supports the order. [Citation.]" (*In re A.E.* (2014) 228 Cal.App.4th 820, 826.)

C. Analysis

Father admits that the evidence supports the juvenile court's findings that he "caused [the child] to be described by section 300, subdivision (b)(1)," and that he "caused [her] to be described by section 300, subdivision (c)." Father further admits that the evidence "arguably showed that [the child] faced a 'substantial danger' to her 'physical health, safety, protection, or physical or emotional well-being.'" He contends, however, that the evidence "did not establish that removal was the only way to protect the minor from that danger." (Italics omitted.)

The juvenile court found that the Department made reasonable efforts to prevent or eliminate the need for removal of the child from father's home, and that there were no reasonable means by which her physical and emotional health could be protected without removing her. The court observed that the Department conducted an investigation and provided visitation and counseling. Safety planning was not possible, however, because of father's "denials concerning his treatment of [the child] and his inability to communicate in a manner that reflected that he would be willing to follow through with those safety plans." The court referred to the fact that during supervised visitation, father continued to discuss mother in derogatory terms in front of the child, and that he was unable to control himself from talking about his personal dislike of social workers or the system. The court also referred to the statements in the child's notebook, which reflected the "inappropriate conduct of father during visitation and how his obsession with respect to what's going on has prevented him from having a normal parent-child relationship and from supporting the minor's emotional health." Substantial evidence supports the court's determination that there were no reasonable means by which the child's physical and emotional health could be protected without removing her from father's physical custody. (§ 361, subd. (c)(1), (3).)

Father contends that *In re Jeannette S.* (1979) 94 Cal.App.3d 52 (*Jeannette S.*), *In re Henry V.* (2004) 119 Cal.App.4th 522 (*Henry V.*), and *In re Ashly F.* (2014) 225 Cal.App.4th 803 (*Ashly F.*), support his contention that the removal order in this case was erroneous. We find those cases distinguishable.

In *Jeannette S.*, the five-year-old child was sent to school in clothes soiled with urine, she was not given breakfast at home, her home was “ ‘filthy,’ ” and she was frequently home by herself after school. (*Jeannette S.*, *supra*, 94 Cal.App.3d at pp. 54, 58.) The mother “had not provided a stable mother role and was unable to place her child’s needs above her own.” (*Id.* at p. 58.)

The appellate court found that there was substantial evidence to support dependency jurisdiction but insufficient evidence to support the removal of the child from the mother’s custody. (*Jeannette S.*, *supra*, 94 Cal.App.3d at pp. 59-61.) The court determined there were two reasonable alternatives. (*Id.* at p. 60.) First, “stringent conditions” could have been imposed regarding keeping the child and the house clean and properly caring for the child, with the warning that the mother would otherwise lose custody. (*Ibid.*) The juvenile court could have also ordered removal of animals from the home and the assistance of a “homemaker service” to keep the house clean. (*Ibid.*) Second, if the mother was incapable of providing a suitable home, the child could have been placed with her father. (*Ibid.*)

In contrast to the unsuitable living conditions in *Jeannette S.*, the instance case involved repeated physical abuse and severe emotional damage. Father’s behavior with the Department and during the pendency of the dependency proceeding demonstrated his unwillingness to follow a safety plan. Even during supervised visits, father refused to heed the visit supervisor’s repeated requests to change the subject when he raised inappropriate topics with the child. Based on the record in this case, we are not persuaded that returning the child to father with “stringent conditions” as in *Jeannette S.* was a reasonable alternative to removal. (*Jeannette S.*, *supra*, 94 Cal.App.3d at p. 60.)

Henry V. is also distinguishable. In *Henry V.*, the four-year-old child had “three linear burn marks on his buttocks,” which a pediatrician believed were most likely inflicted by a curling iron while the child was standing up. (*Henry V.*, *supra*, 119 Cal.App.4th at p. 525; see *id.* at p. 527.) The pediatrician found the parents to be “‘forthcoming’ ” and “‘extremely cooperative.’ ” (*Id.* at p. 527.) The child had significant speech and developmental delays, and a psychologist questioned whether the child was receiving appropriate coaching at home. The psychologist recommended a bonding study with the mother. (*Id.* at p. 526.) A social worker reported that the mother “was making progress showing more affection to [the child]” during weekly visits, she had completed a parenting class, and “the prospects for reunification were good.” (*Id.* at pp. 526-527.)

The appellate court concluded that there was insufficient evidence that the child would be substantially endangered if returned home, and insufficient evidence that there were no means of protecting the child other than removal from parental custody. (*Henry V.*, *supra*, 119 Cal.App.4th at p. 525.) The appellate court observed that the physical abuse was limited to a “single occurrence, and neither the Agency nor the [juvenile] court considered it an obstacle to reunification in the near future.” (*Id.* at p. 529.) Rather, “[t]he [juvenile] explicitly premised the out-of-home placement on the need to complete a bonding study. However, there was no suggestion the study . . . could not have been performed while [the child] resided in his family home.” (*Ibid.*) The appellate court found that there was “ample evidence that appropriate services could have been provided to [the mother] and [the child] in the family home. The social worker acknowledged that in-home bonding services were available, and that unannounced visits and public health nursing services were potential methods of supervising an in-home placement. These resources would address the bonding issue and mitigate the risk of further physical abuse. The social worker credited [the mother] for being fully cooperative in taking advantage of the services that had been offered to her.” (*Ibid.*)

In contrast to *Henry V.*, father in this case admits that there is substantial evidence “that [the child] faced a ‘substantial danger’ to her ‘physical health, safety, protection, or physical or emotional well-being’ ” if she returned home. Indeed the juvenile court in this case found that the child had suffered physical abuse and emotional damage by father on numerous occasions, unlike the single occurrence in *Henry V.* Further, unlike the parent in *Henry V.*, who was “fully cooperative” and had shown progress during weekly visits (*Henry V.*, *supra*, 119 Cal.App.4th at p. 529), the juvenile court in this case observed that father denied any mistreatment of the child, continued to make inappropriate statements to the child during supervised visits, engaged in manipulation of the child while the dependency proceeding was ongoing, and demonstrated through his behavior an unwillingness to comply with safety plans. Substantial evidence supports a finding that in-home services and unannounced visits were not reasonable alternatives to the child’s removal in this case.

In *Ashly F.*, the department failed to discuss in its report the reasonable efforts that were made to prevent or eliminate the need for removal and did not offer any supporting evidence. (*Ashly F.*, *supra*, 225 Cal.App.4th at p. 809.) Likewise, the juvenile court did not state the facts supporting its removal order, nor indicate that it had considered the option of removing the offending parent from the home. (*Id.* at p. 810.) The appellate court found “[a]mple evidence” that there were reasonable means to protect the children in their home. (*Id.* at p. 810.) Specifically, the mother had expressed remorse for the injuries she inflicted and was enrolled in a parenting class to learn other discipline methods. The father had already completed a parenting class. The appellate court determined that “ ‘reasonable means’ of protecting the children that should at least have been considered include unannounced visits by [the department], public health nursing services, in-home counseling services and removing [the mother] from the home.” (*Ibid.*) The appellate court reversed and remanded the matter for a new hearing. (*Id.* at p. 811.)

In contrast to *Ashly F.*, the Department's report in this case did discuss its reasonable efforts to prevent or eliminate the need for removal, and the Department did offer supporting evidence. The juvenile court referred to this evidence in making its finding that removal was warranted. The court also indicated its consideration of removing father from the home as a means of protecting the child, as well as placing the child with mother and why that placement would be detrimental to the child. The court found that father denied mistreating the child, continued to make inappropriate comments during supervised visits, engaged in manipulation of the child while the dependency proceeding was ongoing, and otherwise demonstrated behavior that was inconsistent with a willingness to comply with a safety plan.

Lastly, we also disagree with father's contentions that "the injuries underlying the court's section 300 findings were relatively minor," and that the child could have been protected by in-home counseling services and unannounced visits by the Department. Contrary to father's characterization of the record, the juvenile court found that the child had been physically abused on numerous occasions, including by being hit in the head and punched with a closed fist, that father constantly made negative comments to the child, and that she was suffering "severe emotional damage." Further, the court found that father engaged in "inappropriate conduct" even during *supervised* visits when he continued to talk about mother in derogatory terms, continued to express his dislike of social workers or the system, and otherwise engaged in behavior that was not supportive of the child's emotional health. Father had been given a referral for counseling by the Department, and he had in fact engaged in the counseling by the time of the hearing. At the hearing, however, he continued to deny any mistreatment of the child. There was ample evidence indicating that father was not "willing to follow through with" any safety plans, and that in-home counseling services and unannounced Department visits were not reasonable alternatives to removal. In sum, substantial evidence supports the court's

finding that there were no reasonable means to protect the child's physical and emotional health without removing her from father's physical custody. (§ 361, subd. (c)(1), (3).)

IV. DISPOSITION

The dispositional order of November 7, 2018 is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

GREENWOOD, P.J.

DANNER, J.

In re A.B.; HSD v. G.B.
H046437